

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

May 20, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order.

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	09-93202-D-13	MICHELE WHITE	MOTION TO VALUE COLLATERAL OF
	JDP-1		CITIBANK, N.A.
			4-10-14 [52]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Citibank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Citibank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

2. 14-90402-D-13 DANIEL/MARTHA DEVELBISS MOTION TO VALUE COLLATERAL OF
MLP-1 CITY OF MODESTO
4-24-14 [14]

3. 13-91804-D-13 JEWEL MCCLENDON MOTION TO CONFIRM PLAN
RLF-2 4-1-14 [38]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

4. 11-91310-D-13 ERIC/REBECCA BURKE MOTION TO VALUE COLLATERAL OF
JDP-1 DEUTSCHE BANK NATIONAL TRUST
4-10-14 [77]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Deutsche Bank National Trust at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Deutsche Bank National Trust's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

5. 14-90312-D-13 SARAH KAMIENSKI OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
4-23-14 [20]

6. 14-90313-D-13 CYNTHIA ECHEVARRIA
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-23-14 [22]

7. 11-93519-D-13 CHRISTINA TORRES
JDP-1

MOTION TO VALUE COLLATERAL OF
ONEWEST BANK, N.A.
4-14-14 [43]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Onewest Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Onewest Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

8. 10-93028-D-13 ALAN CLINKENBEARD AND
CJY-1 KELLEY

MOTION TO MODIFY PLAN
4-1-14 [120]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

9. 13-90833-D-13 DONALD/SHERRY MORROW
TBK-2

MOTION TO MODIFY PLAN
4-3-14 [30]

10. 13-90735-D-13 GAIL SPANGGORD
CJY-2

MOTION TO MODIFY PLAN
4-10-14 [37]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

11. 10-94640-D-13 BETH LEONARDO-WYATT
SDM-4

MOTION TO MODIFY PLAN
4-9-14 [61]

12. 10-94947-D-13 FRANK/LUPE RAYMOND
CJY-3

MOTION TO MODIFY PLAN
4-3-14 [54]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

13. 09-93248-D-13 JAMES SWOBODA
CJY-1

MOTION TO MODIFY PLAN
4-1-14 [44]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

14. 09-92049-D-13 ANTHONY CORREIA
JDP-1

MOTION TO VALUE COLLATERAL OF
CITIBANK, N.A.
4-15-14 [75]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Citibank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Citibank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

15. 11-90952-D-13 MICHAEL/MAYUMI FRAZIER
SDM-4

MOTION TO MODIFY PLAN
4-9-14 [50]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition. The court agrees with the trustee on both counts of his opposition, and accordingly, the motion will be denied.

The trustee's first objection is that the plan provides for a dividend to general unsecured creditors in different places in the plan, at 76% and at 29.29%. Thus, parties-in-interest do not know what dividend the debtors are committing to, and the trustee cannot administer the plan.

Second, the debtors have recently obtained approval of a loan modification that saves the debtors \$1,233 per month on their mortgage payment. At the same time, they have filed an amended Schedule J on which they report their other household expenses as increased by \$1,120 per month, thus offsetting almost all of the mortgage savings. The debtors explain these increases by saying they accidentally omitted some expenses when they filed their original schedules, including water and sewer and home maintenance. They have also added new expenses for recreation, \$225, pet care, \$100, and haircuts and personal grooming, \$75. The trustee also points out that, for several categories of expenses, there are discrepancies between the amounts listed on the amended Schedule J and the amounts stated in the debtors' supporting declaration. In short, it appears the primary goal here was to offset the savings from the debtors' loan modification, and thereby, to retain its benefits for the debtors at the expense of their creditors.

The trustee accepts that certain obviously necessary expenses, such as sewer and water, may have been accidentally omitted from the original schedule; however, he questions how the debtors have been able to perform their original plan if their original schedule was so unrealistic. From this, it again appears as if at least some of the increased expenses were included for the primary purpose of offsetting the mortgage savings. Finally, the court agrees with the trustee's assessment of the debtors' recreation expense as excessive and of their pet care expense as unreasonable, as their Schedule B shows no pets.

For the reasons stated, the court concludes that the debtors have failed to meet their burden of demonstrating that the plan is proposed in good faith, and the motion will be denied. The court will hear the matter.

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The hearing was continued, and the debtors were explicitly required by a tentative ruling and at the original hearing to file a notice of continued hearing and to serve it, together with the motion, proposed plan, and supporting declaration and exhibits, on certain creditors not previously served at the addresses on their proofs of claim. The debtors filed a notice of continued hearing, but (1) they gave it a new docket control number, DC No. TPH-5, whereas the motion, the original notice of hearing, declaration, and exhibits all contained DC No. TPH-4; and (2) they filed the motion, declaration, and exhibits again, this time with DC No. TPH-5. They also filed the second amended plan again. The proof of service of DC No. TPH-5 shows that service was made on the chapter 13 trustee, the United States Trustee, and the three creditors not previously served at the addresses on their proofs of claim. (The other creditors were not served.) However, the notice of hearing was identified in the proof of service as the notice of hearing (actually, "Notice of Motion"), not the notice of continued hearing.

The court has an additional concern. In support of the motion, the debtors' counsel re-filed the same declaration the debtors had signed on February 6, 2014, but this time, the declaration states that it was "Executed on April 2, 2014." It is clear that this is not true - the declaration was not executed by the debtors on April 2, 2014; it was executed by them on February 6, 2014. What the debtors' counsel did, apparently, was to white out or tape over the date on the February 6 declaration and type in the date April 2. The debtors' counsel did the same thing with the date of execution of the plan filed April 2. (In each case, the debtors' signatures are handwritten, and they are identical to the signatures the debtors provided on February 6. It does not take a handwriting expert to know that no two signatures are identical, especially no two signatures of two different people on the same document.)

The court recognizes that the plan and declaration filed April 2 are identical to those filed February 6. That is a far different thing, however, from representing that the debtors actually signed the documents on April 2: that is misleading.

As a result of the filing of the motion bearing DC No. TPH-5, the present motion is, as the trustee points out in his opposition, moot. The motion will be denied as moot by minute order. No appearance is necessary.

17. 13-91554-D-13 ROBERT/ELISSA HART
TPH-5

MOTION TO CONFIRM SECOND
AMENDED PLAN
4-2-14 [64]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve all creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g)(1), and they failed to serve at all those creditors listed on their Schedules D and F who have not filed proofs of claim, as required by Fed. R. Bankr. P. 2002(b) and (g)(2). The court reminds the debtors' counsel, in connection with any future motion, that an earlier motion was not served on Credit One Bank, N.A. because the debtors listed that creditor on their Schedule F with an "unknown" address. Although the debtors later served a different motion on that creditor at a post office box address, they have not filed an amended master address list; thus, that creditor's address will not appear on the court's PACER matrix.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

18. 14-90262-D-13 FREDERIC/ALICIA NEERKEN
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-21-14 [14]

19. 12-92865-D-13 VANCE PRATHER
MLP-2

MOTION TO MODIFY PLAN
4-14-14 [32]

20. 14-90265-D-13 LEONARD/TRACY WEBSTER
BSH-1

MOTION TO VALUE COLLATERAL OF
CITY NATIONAL BANK/OCWEN LOAN
SERVICE
4-16-14 [17]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of City National Bank/OCWEN Loan Service at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of City National Bank/OCWEN Loan Service's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

21. 14-90265-D-13 LEONARD/TRACY WEBSTER
BSH-2

MOTION TO VALUE COLLATERAL OF
MOCSE CREDIT UNION
4-16-14 [23]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

22. 10-94269-D-13 MANUEL/ERIKA MANRIQUEZ
SSA-5

MOTION TO MODIFY PLAN
3-25-14 [96]

23. 13-92170-D-13 TATIANA LAGOUTOTCHKIN
MLP-1

CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO HOME
MORTGAGE
2-4-14 [17]

Final ruling:

This motion has been resolved by a stipulated order entered April 21, 2014. As such, the matter is removed from calendar. No appearance is necessary.

24. 14-90372-D-13 HOMER/HELEN MALDONADO
ALF-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
4-7-14 [15]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Wells Fargo Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Wells Fargo Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

25. 13-90374-D-13 CHARLES/KIMBERLY VAN
CJY-4 PETTEN

MOTION TO MODIFY PLAN
4-15-14 [44]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

26. 14-90476-D-13 MIGUEL/LETICIA HERNANDEZ
SDM-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
4-16-14 [13]

Final ruling:

This is the debtors' motion to value collateral of Wells Fargo Bank (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank to the attention of a named chairman, president, and CEO. However, service was made by first-class mail, not certified mail, as required by Fed. R. Bankr. P. 7004(h).

In addition, the moving parties failed to serve the attorneys who had earlier filed a request for special notice on behalf of the Bank. In addition to filing the request for special notice, those attorneys signed and filed a proof of claim in this case for the Bank as holder of the first deed of trust on the property that is the subject of this motion. It is not known whether those attorneys are also representing the Bank as holders of the second deed of trust, but if they are, they should have been served, as required by Fed. R. Bankr. P. 7004(h), subd. (1). (For future reference, counsel should note that service on an attorney for an FDIC-insured institution, under the rule just cited, must be by first-class mail, not certified mail.)

As a result of these service defects, the motion will be denied by minute order. No appearance is necessary.

27. 12-92478-D-13 DANIEL/SUSAN AGUNDEZ
CJY-1

MOTION TO MODIFY PLAN
4-15-14 [25]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

28. 09-90180-D-13 MARIO/ADRIANA ACOSTA
JDP-1

MOTION TO VALUE COLLATERAL OF
UNITED GUARANTY RESIDENTIAL
INSURANCE COMPANY OF NORTH
CAROLINA
4-10-14 [59]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of United Guaranty Residential Insurance Company of North Carolina at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of United Guaranty Residential Insurance Company of North Carolina's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

29. 09-91881-D-13 DAVID DAY AND IRIS
JDP-1 RODRIGUEZ

MOTION TO VALUE COLLATERAL OF
HSBC MORTGAGE
4-14-14 [135]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of HSBC Mortgage at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of HSBC Mortgage's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

30. 12-90894-D-13 MIKE/VICTORIA COTTA
YG-3

MOTION TO MODIFY PLAN
4-24-14 [66]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties gave only 29 days' notice of the hearing, rather than 35 days', as required by LBR 3015-1(d) (2) and applicable rules; (2) the moving parties served only the motion and the plan, and not the notice of hearing; (3) the moving parties failed to serve the three creditors who have requested special notice in this case at their designated addresses, as required by Fed. R. Bankr. P. 2002(g); (4) the moving parties failed to serve several of the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. 2002(g); and (5) the proofs of service do not include the docket control number, as required by LBR 9014-1(e) (3).

As a result of these service, notice, and other defects, the motion will be denied by minute order. No appearance is necessary.

31. 14-90295-D-13 LORENZO OJEDA
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-23-14 [40]

Final ruling:

This case was dismissed on April 25, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

32. 14-90295-D-13 LORENZO OJEDA
SSA-1
ARTHUR/BEATRIZ SANCHEZ VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-22-14 [24]

Final ruling:

This case was dismissed on April 25, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

33. 14-90295-D-13 LORENZO OJEDA
SSA-2

OBJECTION TO CONFIRMATION OF
PLAN BY ARTHUR SANCHEZ AND
BEATRIZ SANCHEZ
4-22-14 [31]

Final ruling:

This case was dismissed on April 25, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

